

(2024) 04 PAT CK 0061
In the Patna High Court
Case No : Criminal Appeal (SJ) No. 3978 Of 2022

Bablu Mehta

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 23-04-2024

Acts Referred:

Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(s), 14A(1)
Indian Penal Code, 1860 — Section 120B, 302
Arms Act, 1959 — Section 27
Code Of Criminal Procedure, 1973 — Section 202, 204, 482

Citation : (2024) 04 PAT CK 0061

Hon'ble Judges : Shailendra Singh, J

Bench : Single Bench

Advocate : Bimlesh Kumar Pandey, Usha Kumari 1, Shamshul Hoda

Final Decision : Dismissed

Judgement

1. Heard Mr. Bimlesh Kumar Pandey, learned counsel for the appellants, Ms. Usha Kumari 1, learned APP for the State and Mr. Shamshul Hoda, learned counsel for the respondent no. 2.

2. The appeal has been filed under section 14A(1) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'SC/ST Act') against the order dated 28.08.2020 passed by the learned Additional Sessions Judge-I- cum-Special Judge, SC/ST, Madhepura, in connection with Alamnagar P.S. Case No. 104/2020 corresponding to SC/ST Case No. 77/2020 whereby and whereunder, the learned trial court has taken cognizance against the appellants for the offences under sections 302 and 120B of the Indian Penal Code (in short 'IPC') and under section 27 of the Arms Act and under section 3(i)(r)(s) of SC/ST Act.

3. Mr. Bimlesh Kumar Pandey, learned counsel appearing for the appellants submits that the informant is not an eye-witness of the alleged occurrence and

even her son, who informed the informant regarding the victim lying on the road, is also not said to be an eye-witness of the occurrence and during investigation, it came into light that one Antu Paswan had developed extramarital relationship with the informant and in this regard, the statements of independent witnesses namely, Baiju Rajak and Reena Devi who are relatives of the deceased discussed in the para nos. 15 and 16 of the case diary are relevant and during investigation, some of the villagers who saw the actual occurrence stated that the said Antu Paswan with three unknown persons were eating maize (bhutta) who called the informant's husband Pankaj Rajak (victim) and the said victim reached there and thereafter, the sound of firing was heard and after that, Antu Paswan and his unknown friends were seen fleeing from the place of occurrence and in this regard, the statements of independent persons namely, Naresh Mandal and Meena Devi recorded by the investigating officer mentioned in para nos. 55 and 60 of the case diary are relevant. Learned counsel further submits that on the alleged day of occurrence, before and after the commission of the alleged occurrence of murder, the informant who happens to be wife of the deceased remained in touch with Antu Paswan, with whom she had extramarital relationship, through mobile communication and several calls were made in between them and in this regard, there is sufficient materials in the case diary and in actual, the said Antu Paswan eliminated the informant's husband for fulfilling his illegal desire and the informant just in order to save Antu Paswan lodged the FIR with false allegation giving a different colour to the incident and during investigation, it came into light that one Ashok Yadav who was inimical to the informant's husband had set up Antu Paswan to develop illicit relation with the informant in order to grab 2 bigha disputed land. It is further submitted that the allegations levelled by the informant in the FIR were thoroughly investigated and ultimately, the police did not find the appellants' complicity in the alleged occurrence and submitted the final form showing the appellants not sent up for trial and the trial court did not look into the relevant materials and the paragraphs of case diary upon which the learned trial court placed reliance do not disclose even the prima facie material to show the involvement of the appellants in the alleged occurrence. Learned counsel further submits that the appellants have been made accused mainly on account of being relatives of the co-accused Anishek Mehta with whom the deceased had some land dispute and the FIR has been registered against 12 persons including the appellants but all of them have been made accused mainly on the basis of suspicion without any basis. Learned counsel further submits that as per the FIR and restatement of the informant, the appellants were members of the conspiracy allegedly hatched up by them with co-accused Anishek Mehta to eliminate the informant's husband but there is nothing material to show the alleged conspiracy and the police did not find any material to show that any of the appellants had earlier threatened the victim or was/were present at or near the place of occurrence at the time of commission or met the main accused Anishek Mehta at the time of offence, so, the allegation that the appellants were members of the alleged conspiracy is completely baseless. In support of these submissions, learned counsel has placed

reliance upon the judgment of the Hon'ble Supreme Court passed in Cr. App. No. 3618/2023 and referred the para 23 of the said judgment which is being reproduced as under :-

"23. On a careful conspectus of the legal spectrum, juxtaposed with our view on the facts and merits expressed hereinbefore, we are satisfied that there is no suspicion, much less strong or grave suspicion that the appellants are guilty of the offence alleged. It would be unjustified to make the appellants face a full-fledged criminal trial in this backdrop. In an appeal dealing with the refusal of the High Court to quash an FIR under Section 482, CrPC albeit, this Court, while setting aside the judgment impugned therein and quashing that FIR, took the view that '...the Appellants are to be protected against vexatious and unwarranted criminal prosecution, and from unnecessarily being put through the rigours of an eventual trial.' [Priyanka Mishra v State of Uttar Pradesh, 2023 INSC 729 | 2023 SCC Online SC 978] The protection against vexatious and unwanted prosecution and from being unnecessarily dragged through a trial by melting a criminal proceeding into oblivion, either through quashing a FIR/ Complaint or by allowing an appeal against an order rejecting discharge or by any other legally permissible route, as the circumstances may be, in the deserving case, is a duty cast on the High Courts. The High Court should have intervened and discharged the appellants. But this Court will intervene, being the sentinel on the qui vive."

4. On the contrary, Mr. Shamshul Hoda, learned counsel appearing for the respondent no. 2 has argued that all the appellants are named in the FIR and the alleged occurrence was committed in furtherance of conspiracy hatched up by the appellants and others and the informant made allegations against the appellants and also reiterated the same in her restatement and it is settled principle of law that the truthfulness of the allegation would have to be decided in the trial and the allegations made by the informant (respondent no. 2) in the FIR are prima facie sufficient to constitute the cognizable offences against the appellants and it is well settled principle of law that the power of quashing of criminal proceeding should be exercised sparingly with circumspection and that to the rarest of the rare cases. In support of these submissions, learned counsel for the respondent no. 2 has placed reliance upon the judgment of the Hon'ble Supreme Court passed in Special Leave Petition No. 2953/2022 and the relevant para no. 39 which has been referred by the learned counsel is being reproduced as under :

"39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal

case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No.19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under section 482 of the Cr.P.C.”

5. Heard both the sides and perused the order impugned and other relevant materials. All the appellants are named in the FIR and they are said to be relatives of the main co-accused Anishek Mehta with whom the deceased had land dispute. Though the informant and his son are not said to be eye-witnesses of the alleged occurrence but according to the informant, the alleged occurrence was committed in furtherance of the conspiracy hatched up by the appellants and others. The informant remained firm to her allegations during investigation while recording her restatement and according to her, the co-accused Anishek Mehta and his family members were pressurizing the informant’s husband (victim) to vacate the disputed land and also threatened to kill him if he did not vacate his possession over the said land. Almost same allegations were made by some material witnesses namely, Ramcharan Paswan, Jantu Paswan, Manjula Devi and Rajesh Paswan and there is no dispute of homicidal death of the victim and it is settled principle of law that allegations are true or untrue can only be decided in the trial and a criminal proceeding should not be nipped in the bud particularly when there is sufficient prima facie material to show the commission of an offence and an accused should not be exonerated at the initial stage of trial merely on this ground that there is no any direct evidence against him and simply a suspicion has been raised against him. Though, in the present matter, the defences taken by the appellants, as discussed above, are relevant but the truthfulness of the said defences can only be decided after taking the evidence of the prosecution and it will not be proper to exonerate the appellants at the initial stage of their trial from the allegations levelled by the informant by merely placing reliance upon some of the materials which have been collected by the investigating officer as the reliability and admissibility of such materials can only be decided during trial by the trial court. In the case of *Municipal Corporation of Delhi vs. Ram Kishan Rohtagi and Ors.*, reported in (1983) 1 SCC 1, the Hon’ble Apex Court laid down the following principle regarding the exercise of power of quashing under section 482 of Cr.P.C. by the High Courts, which is being reproduced as under :

“7. The limits of the power under Section 482 were clearly defined by this Court in *Raj Kapoor v. State* [(1980) 1 SCC 43 : 1980 SCC (Cri) 72] where Krishna Iyer, J. observed as follows : [SCC para 10, p. 47: SCC (Cri) p. 76]

“Even so, a general principle pervades this branch of law when a specific

provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code."

8. Another important consideration which is to be kept in mind is as to when the High Court acting under the provisions of Section 482 should exercise the inherent power insofar as quashing of criminal proceedings are concerned. This matter was gone into in greater detail in *Smt Nagawwa v. Veeranna Shivalingappa Konjalgi* [(1976) 3 SCC 736 : 1976 SCC (Cri) 507 : 1976 Supp SCR 123 : 1976 Cri LJ 1533] where the scope of Sections 202 and 204 of the present Code was considered and while laying down the guidelines and the grounds on which proceedings could be quashed this Court observed as follows: [SCC para 5, p. 741 : SCC (Cri) pp. 511-12]

"Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

9. Same view was taken in a later decision of this Court in *Sharda Prasad Sinha v. State of Bihar* [(1977) 1 SCC 505 : 1977 SCC (Cri) 132 : (1977) 2 SCR 357 : 1977 Cri LJ 1146] where Bhagwati, J. speaking for the Court observed as follows: [SCC para 2, p. 506 : SCC (Cri) p. 133]

"It is now settled law that where the allegations set out in the complaint or the chargesheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure to quash the order passed by the Magistrate taking cognizance of the offence.

10. It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers

accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code.”

6. The above principles were followed by the Hon’ble Apex Court in the recent case of Ramveer Upadhyay & Anr. vs. State of U.P. & Anr., reported in 2022 SCC Online SC 484. Considering the above principles laid down by the Hon’ble Apex Court as well as in view of the discussion made in para 5 of this judgment, there is sufficient prima facie material to attract the alleged offences of which the cognizance has been taken, against the appellants and the order impugned appears to be proper and there is no need to interfere in the same. Accordingly, this Court finds no merit in this appeal.

7. In the result, the instant appeal stands dismissed.